IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.308 OF 2005
IN
CHAMBER SUMMONS NO.776 OF 2004
IN
SUIT NO.391 OF 1982

Mr.Durga Prasad Poddar ..Appellant.
(Orig.Respdt.)

Vs.

Pankaj Anantrai Bhuwa & Ors. ..(Nos.1 to 3 Orig. Plffs.)

And

M/s.Ramkumar Shivchandray & Sons Pvt. Ltd. ..Respondents.

Mr.Nimish Dhruve i/b.M/s.M.Dhruva & Co. for the Appellants.

Mr.R.M.Tiwari for Respondent Nos.1 to 3.

Mr.M.M.Dadhich for Respondent No.4.

CORAM: A.P.SHAH AND
S.J.VAZIFDAR, JJ.

DATED: 5TH APRIL, 2005

P.C. :

This is an Appeal against the order of the learned single Judge dismissing the Appellant's Chamber Summons for adding him as a party Defendant to the suit.

2. The impugned order warrants no interference.

The suit is filed for specific performance of an agreement dated 21.3.1981 against the Defendant company. He seeks to be impleaded as a Defendant on the basis that the present management was running the affairs of the company in a clandestine manner and would submit to the orders in the suit to the detriment of the interest of the company thereby affecting his rights.

3. The learned Judge has rightly held that the Appellant as a Director of the company has no independent right in the assets of the company and entitled therefore to be impleaded in a suit filed by the company. The Appellant holds 18% share in the equity shares of the Defendant company. The remedy of the Appellant however is not by having himself impleaded in the suit. If, according to him, the company will not defend the suit properly and will act to the detriment of the company, it is always open to the Appellant to adopt proceedings in accordance with law to safeguard the interest of the company such as by resorting to provisions of section 397 and 398 of the Companies Act or by filing a derivative action.

4. Mr.Dhruve invited our attention to the order and

judgment of a learned single Judge of the Calcutta High Court in Appeal No.234 of 2004 dated 30.9.2004 in which the learned Judge has permitted the shareholders of the company to apply for being added as party Defendants to this suit to enable them to effectively resist the claim of the Plaintiff. That by itself would not entitle the Appellant to be impleaded as a Defendant in this suit if he is otherwise not entitled to be so impleaded.

5. In the circumstances, the Appeal is dismissed. There shall be no order as to costs.